

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TERRANCE GADSON, BRACEY C.)	
DIXON, JR., FRED COOPER,)	
and COREY FERRELL,)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. 05-479-SLR
)	
CITY OF WILMINGTON FIRE)	
DEPARTMENT,)	
)	
Defendant.)	

O R D E R

At Wilmington this 10th day of August, 2006, defendant having filed a motion to dismiss the complaint and an accompanying brief and appendix on June 26, 2006 (D.I. 9, 10, 11);

IT IS ORDERED that:

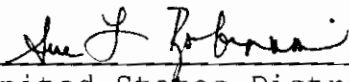
1. Because matters outside of the pleadings were presented to the court in support of said motion to dismiss, the court will review the motion as one for summary judgment pursuant to Fed. R. Civ. P. 12(b) and 56(b).

2. Because defendant relies upon an affidavit in support of the motion, the averments of fact in the affidavit shall be accepted as true, pursuant to Fed. R. Civ. P. 56(e), for the purpose of deciding the motion unless plaintiffs timely file a counter-affidavit or statement under penalty of perjury refuting said averments.

3. Briefing on this motion shall proceed in accordance with the following schedule:

a) Plaintiffs shall file and serve a response to defendant's motion (including an answering brief and accompanying affidavits, exhibits, etc., if any) on or before **September 11, 2006**.

b) Defendant may file and serve a reply brief on or before **September 25, 2006**.



United States District Judge